

December 10, 2002

Jill Lipoti, Ph.D., Assistant Director  
Radiation Protection Program  
Department of Environmental Protection  
State of New Jersey  
P.O. Box 415  
Trenton, New Jersey 08625-0415

Dear Dr. Lipoti:

I am responding on behalf of the U.S. Nuclear Regulatory Commission (NRC) to your October 25, 2002, letter regarding the Memorandum of Understanding (MOU) between the Environmental Protection Agency (EPA) and the NRC. As your letter points out, NRC values feedback from our stakeholders.

NRC has been, and continues to be, open with regard to our goal of eliminating dual regulation at NRC-licensed sites. Similarly, NRC has been open with regard to the general development of an agreement between NRC and EPA to eliminate or limit such dual regulation. The MOU has been discussed at several public meetings as well as several meetings of the Interagency Steering Committee on Radiation Standards (ISCORS) which has a State representative. However, the details of the MOU were developed without public involvement because the MOU is limited to an understanding between NRC and EPA with regard to consultation between the two Federal Agencies.

Since 1983, EPA has had a policy of deferring to NRC with respect to NRC-licensed sites, but not deferring to Agreement States. See 48 FR 40658. This MOU is based on that EPA policy. The MOU is essentially an agreement by EPA to extend that policy to sites for which an NRC license is terminated. In a November 5, 2002, meeting, EPA indicated that it would consider similar MOU's with Agreement States upon request.

As you may know, both EPA and NRC were under instruction by the House Appropriations Committee to develop an MOU that would eliminate dual regulation of NRC licensees except at NRC request. H.R. Rep. No. 106-286 (1999). The MOU does not fully meet the intent of the instruction because the threat of dual NRC/EPA regulation remains for certain licensees. Thus, although the MOU reduces dual jurisdiction, the NRC will continue efforts to seek legislation that would eliminate the possibility of dual regulation of all NRC decommissioning licensees, including Agreement State licensees. The NRC would welcome your support in our efforts to resolve this potential for dual regulation through legislation. I enclose a copy of the legislative provision which the Commission submitted to Congress in 2001.

You indicate in your letter New Jersey has significant technical concerns with the effects of the MOU. It is important to clarify that the concentration list attached to the MOU does not represent cleanup values for either NRC or EPA, but merely triggers for a consultation. NRC licensees will continue to be held to the requirements of the License Termination Rule (10 CFR Part 20, Subpart E).

At this point the MOU is final and we are not soliciting public comments. Rather, our efforts are currently focused on communicating the contents of the MOU to our stakeholders as quickly as possible through meetings, notices, and press releases. I understand that a member of your staff attended the meeting on November 5, 2002, and you participated by phone. I hope that you found the meeting helpful in addressing your concerns.

If you have any further questions or concerns, please contact me.

Sincerely,

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Richard A. Meserve

Enclosure: As stated